

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ROBERT W. FASSETT,

Appellant,

v.

LEHANE'S BUS CO.
and UNEMPLOYMENT INSURANCE
APPEAL BOARD

Appellees.

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C.A. No. 06A-01-004 SCD

Submitted: August 14, 2006

Decided: August 17, 2006

O R D E R

This 17th day of August, 2006, the appeal of the Robert W. Fassett ("Fassett") having been considered, and there being no response from Lehane's Bus Co. ("Lehane's"), appellant, it appears:

1. Fassett worked as a school bus driver for Lehane's Bus Co. Fassett filed a claim for unemployment with an effective date of August 3, 2003.
2. Fassett received unemployment benefits for weeks ending January 31, 2004, April 10, 2004, and June 11, 2004. Fassett was required to report his wages for this time period.
3. Sometime in 2005, the Delaware Department of Labor conducted an audit of Fassett's unemployment insurance claim/payment history. It was determined that Fassett had inadvertently misrepresented his reported wages for the aforementioned time period. Fassett did not report bonuses received as wages. Based on the error in reporting, on June 15, 2005, Fassett was notified that he had been overpaid \$292 in benefits and was to repay this amount to the Department of Labor.

4. On June 22, 2005, Fassett appealed the Department of Labor's determination of overpayment. On July 18, 2005, a hearing was held before an Appeals Referee.

5. The Appeals Referee found that, based on Fassett's inadvertent omission, there was an overpayment in benefits and Fassett received benefits to which he was not entitled. The Referee found Fassett had been overpaid \$192 and was to repay that amount to the Department of Labor.¹ On August 1, 2005, Fassett appealed the Referee's decision.

6. On October 19, 2005, a hearing was held before the Unemployment Insurance Appeal Board. The Board affirmed the Referee's decision.²

7. The function of the reviewing Court is to determine whether the Board's decision is supported by substantial evidence.³ Substantial evidence means relevant evidence a reasonable mind might accept as adequate to support a conclusion.⁴ The Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁵ If the record below contains substantial evidence to support the findings of the Board, then that decision will be affirmed.⁶

8. Fassett filed an appeal, and disputes the computation of the amount deemed to be overpayment. He does not demonstrate that factual findings in the record as to his erroneous

¹ The Appeals Referee modified the claims deputy's decision to reflect the amount of overpaid benefits to be \$192. The Department admitted the original overpayment amount, \$292 was incorrect and should be revised to \$192. *Fassett v. Lehane's Bus Co.*, Decision of Appeals Referee (Jul 30, 2005).

² *Fassett v. Lehane's Bus. Co.*, UIAB Appeal Hearing No. 537139 (Jan. 1, 2006), *aff'g* Decision of Appeals Referee (Jul. 30, 2005).

³ *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1985).

⁴ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

⁵ *Johnson*, 231 A.2d at 66.

⁶ *Adams v. Nabisco*, 1995 WL 653435 (Del. Super. Ct.)

wage reports and subsequent overpayment lack support in the record. His argument is that the bonus money he received should not be included in the calculation of his wages.

9. Wages are defined by statute:

“Wages” means all remuneration for personal services, including commissions, bonuses, dismissal payments, holiday pay, back pay awards and cash value of all remuneration in any medium other than cash.⁷

10. The record supports the Board’s finding that Fassett does not deny earning bonus money or receiving unemployment compensation. The order of recoupment of overpayment of benefits is authorized by statute.⁸ There is no error of law.

WHEREFORE, the decision of the Unemployment Insurance Appeal Board is affirmed.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

xc: Robert W. Fassett
Lehane’s Bus Co.
Unemployment Insurance Appeal Board

⁷ 19 Del. C. § 3302(18).

⁸ 19 Del. C. § 3325.